FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 19 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. 457

VAN M. GRIFFITH,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Public Works,

Appellee,

CITY OF LOS ANGELES, a municipal corporation; *et al.*,

Appellees.

MOTION TO DISMISS.

ROGER ARNEBERGH,
City Attorney,
BOURKE JONES,
Assistant City Attorney,
CLAUDE E. HILKER,
Deputy City Attorney,
400 City Hall,
Los Angeles 12, California,
Attorneys for Appellee, City of Los Angeles.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171

SUBJECT INDEX

PAGE

Statement of facts 2

I.

The judgment appealed from rests upon an adequate non-federal basis 5

II.

The federal questions sought to be reviewed were not expressly passed upon by the state courts 9

III.

The instant appeal does not present a substantial federal question 13

Conclusion 14

TABLE OF AUTHORITIES CITED

Cases	Page
Barrington v. Missouri, 205 U. S. 483, 27 S. Ct. 582, 51 L. Ed. 890	10
Buck v. People of the State of California, 343 U. S. 99, 72 S. Ct. 502, 96 L. Ed. 775	8
Hammerstein v. Superior Court of California, 340 U. S. 622, 71 S. Ct. 521, 95 L. Ed. 586	8
House v. Road Improvement District No. 2, 266 U. S. 175, 45 S. Ct. 60, 69 L. Ed. 229	11, 13
International Steel & Iron Co. v. National Surety Co., 297 U. S. 657, 56 S. Ct. 619, 80 L. Ed. 961	13
Lynch v. New York ex rel. Pierson, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191	11, 12, 13
Michigan Sugar Co. v. Michigan, 185 U. S. 112, 22 S. Ct. 581, 46 L. Ed. 829	11
Parker v. McLain, 237 U. S. 469, 35 S. Ct. 632, 59 L. Ed. 1051	6, 13
Southwestern Bell Telephone Co. v. Oklahoma, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 51	12
Stembridge v. State of Georgia, 343 U. S. 541, 72 S. Ct. 834, 96 L. Ed. 1130	8
Thomas v. Iowa, 209 U. S. 258, 28 S. Ct. 487, 52 L. Ed. 782	11
United States Fidelity & Guaranty Co. v. State of Oklahoma, 230 U. S. 141, 39 S. Ct. 399, 63 L. Ed. 876	13
Valley Steamship Co. v. Wattawa, 244 U. S. 202, 37 S. Ct. 523, 61 L. Ed. 1084	11, 13
Zorach v. Clauson, 343 U. S. 306, 72 S. Ct. 679, 96 L. Ed. 954	8
Zucht v. King, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194	13

STATUTES	PAGE
California Code of Civil Procedure, Sec. 1240(3)	8
California Rules on Appeal, Rule 28(b)	2
California Streets and Highways Code, Sec. 103.5	6, 11
United States Constitution, Art. I, Sec. 10	6, 11
United States Constitution, 14th Amendment	6, 11

IN THE

Supreme Court of the United States

October Term, 1960

No. .....

VAN M. GRIFFITH,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Public Works,

Appellee,

CITY OF LOS ANGELES, a municipal corporation, *et al.*,

Appellees.

MOTION TO DISMISS.

The appellee, City of Los Angeles, a municipal corporation, hereby moves to dismiss the appeal heretofore filed with this Honorable Court by Van M. Griffith. Such motion is based upon the following grounds:

1. The judgment appealed from rests upon an adequate non-federal basis.

2. The federal questions sought to be reviewed were not expressly passed upon.

3. The appeal does not present a substantial federal question.

The Statement of Jurisdiction filed by the appellant herein contains several misleading statements and omis-

sions which it is necessary to point out and correct before we can properly discuss and elaborate upon each of our above-mentioned grounds in support of our Motion to Dismiss.

Statement of Facts.

The following statement of facts is based upon the factual statement of the California District Court of Appeal set forth in its opinion (which must be accepted as true since appellant herein never filed a petition for rehearing before that court under Rule 28(b) of the Rules on Appeal adopted by the Judicial Council of the State of California requesting a correction of the record before filing his petition for hearing in the California Supreme Court).

In 1897 appellant's father deeded to the City of Los Angeles in fee simple and without condition 3000 acres of land which the City of Los Angeles dedicated to park purposes. In 1898 appellant's father deeded to the City of Los Angeles some 3015.788 acres of land, including the 3000 acres deeded the previous year, which later deed contained the provision:

> ". . . this gift and grant is made, and said property is hereby conveyed upon condition that said land shall be used and maintained by said City of Los Angeles and its successors in interest and estate, exclusively as a public park and pleasure ground, for the amusement, recreation, health and pleasure of its inhabitants," and upon the further condition that the name of said park . . . be continued as the official name and designation of said park; and whenever said tract of land hereby conveyed, or any part thereof shall cease to be used as a park, and for pleasure, amusement, recreation, health, and

uses incident to the aforesaid uses according to the intents and meanings of the same, and if said City or its successors in interest or estate shall at any time change the official name of said park from Griffith Park to some other name or designation, then the lands hereby conveyed shall immediately upon the happening of either of said events, revert to said parties of the first part or to their heirs. It is understood that the use of any part of said premises . . . for railroad or other transportation purposes for carrying the inhabitants of said City into and through said park, shall not be considered a violation of any of the conditions upon which this donation and grant are made, anything herein to the contrary thereto notwithstanding. . ."

These lands, together with others subsequently acquired by the City of Los Angeles, were and are known as Griffith Park.

In 1955 the California State Highway Commission by resolution authorized, and the State of California commenced, a proceeding to condemn the interests of the City of Los Angeles and of appellant Van M. Griffith and others in approximately 200 acres of said park lands to make way for the construction of a state freeway therein.

The City of Los Angeles answered and denied the state's right to condemn such land, but stipulated with the state that the value thereof was $3,750,000. Appellant Griffith's answer to the complaint consisted primarily of the contention that the state could not condemn such land because: 1) contrary to the terms of the 1898 deed, and 2) contrary to the City Charter, but claimed no right to reversion or compensation for the

taking of his claimed interest therein. Some 3½ years after he had filed his answer, and shortly before the actual trial of the matter, Griffith sought leave to file a cross-complaint, which leave was denied.

Thereafter the trial court determined that the use of Griffith Park lands for the construction of a freeway was not prohibited by the terms of the 1898 deed; that the condemnation of such lands was permissible; that no part of Griffith Park reverted to appellant and that he had no compensable interest therein. The above rulings were affirmed in the California District Court of Appeal and appellant's Petition for Hearing in the California Supreme Court was denied.

In the light of the foregoing it is submitted that appellant's factual references in his Statement of Jurisdiction are in error or incomplete in the following material respects:

1. Appellant omits any reference (other than by quoting from the opinion of the District Court of Appeal) to the fact that his father had conveyed a substantial portion of the Griffith Park lands to the City of Los Angeles in 1897 in fee simple and without condition, and that it is only the *additional* lands conveyed by the 1898 deed which were subject to the provisions of that later deed.

2. Appellant omits any reference to what, if any, of the additional lands conveyed by the 1898 deed were condemned.

3. Appellant has only partially set forth the conditions to the 1898 deed (Statement of Jurisdiction, page 3) and has failed to mention the substance or set forth the *whole* thereof as we have quoted above.

4. Appellant in framing his question No. 1 (Statement of Jurisdiction, page 3) incorrectly refers to the state freeway as being "inconsistent" with the dedication of the subject land for park purposes under the 1898 deed. He avoids mentioning the explicit provision of the 1898 deed, hereinabove quoted, that "the use of any part of said premises for . . . transportation purposes, for carrying inhabitants of said City into and through said park, shall not be considered a violation of any of the conditions upon which this donation and grant are made", and further avoids mentioning the trial court and District Court of Appeal rulings in interpreting such phrase that the use of the subject land for freeway purposes *is* consistent with the terms of the 1898 deed. (Statement of Jurisdiction, Appendix, page 16.)

I.

The Judgment Appealed From Rests Upon an Adequate Non-Federal Basis.

As we understand the rather lengthy federal questions urged by appellant as a basis for this appeal (Statement of Jurisdiction, pp. 3 to 6), they are essentially as follows:

1. That by reason of (a) Griffith Park having reverted to him, and (b) no compensation having been paid for the taking of Riverside Drive within Griffith Park, the condemnation of a portion of Griffith Park by the State of California for its "inconsistent" use as a state freeway without appellant's being compensated therefore is in violation of the 14th Amendment to the United States Constitution.

2. That by reason of (a) his being denied leave to file a cross-complaint, (b) the taking of Griffith Park lands in violation of the 1898 deed, and

(c) his reversionary interest having been taken without compensation, he has been denied due process of law under the 14th Amendment to the United States Constitution.

3. That by reason of the passage of (a) Section 103.5 of the California Streets and Highways Code, (b) a resolution of the State Highway Commission, and (c) an ordinance of the City of Los Angeles, and a resolution of the Board of Recreation and Park Commissioners of such City, the obligation of the 1898 deed has been impaired (presumably in violation of Article 1, Section 10 of the United States Constitution).

A careful reading of the above federal questions posed by appellant shows that his claim of the denial to him of certain federal constitutional rights is based upon his misstatement of the answers to certain basic non-federal questions. As was stated in *Parker v. McLain*, 237 U. S. 469, 35 S. Ct. 632, 59 L. Ed. 1051, a federal question resting on false assumptions is without merit and affords no basis for review by the United States Supreme Court. We submit that the opinion of the District Court of Appeal on certain non-federal questions renders unnecessary a specific determination upon the federal questions urged by appellant and provides an adequate non-federal basis upon which the judgment of the District Court of Appeal may be sustained. Such determinative non-federal rulings of the District Court of Appeal are as follows:

1. The taking of lands and the construction of a freeway in Griffith Park by the State of Cali-

fornia is consistent with and not prohibited by the terms of the 1898 deed of certain of the Griffith Park lands to the City of Los Angeles and did not cause a reversion thereof to appellant (Statement of Jurisdiction, Appendix, p. 16).

2. In any event, the 1898 deed conveyed a fee simple subject to a condition subsequent which required a reentry in order to terminate the estate granted if the conditions were breached (Statement of Jurisdiction, Appendix, page 13), and even assuming that the state's condemnation of a portion of Griffith Park and its construction of a freeway thereon constituted such a breach, appellant never exercised his right of reentry (Statement of Jurisdiction, Appendix, pp. 15 and 16), and thus the City's fee simple estate continued (Statement of Jurisdiction, Appendix, p. 13) and such park lands did not revert to appellant.

3. Riverside Drive constituted a portion of the freeway easements taken by the State of California for which compensation was paid to the City of Los Angeles (Statement of Jurisdiction, Appendix, p. 11).

4. The granting or denial to appellant by the trial court of leave to file a cross-complaint after his filing of an answer to the complaint is a matter of discretion with the trial court and no showing of abuse of discretion by the trial court's denying such leave was shown by appellant under the facts of this

case (Statement of Jurisdiction, Appendix, pp. 8 and 9).

5. It was impossible in any event to award appellant any compensation for the taking of his reversionary interest because he offered no proof as to the value thereof, if any, nor did he ever claim other than the value of the entire fee (Statement of Jurisdiction, Appendix, pp. 19 and 21).

6. The California Code of Civil Procedure, Section 1240(3) (the validity of which is not attacked by appellant herein) authorized the state to acquire the questioned freeway easement in the instant case (Statement of Jurisdiction, Appendix, p. 4).

The law is clear that the United States Supreme Court will not take jurisdiction of a matter where the judgment of the state court could be supported upon an adequate non-federal ground. (*Stembridge v. State of Georgia*, 343 U. S. 541, 72 S. Ct. 834, 96 L. Ed. 1130; *Buck v. People of the State of California*, 343 U. S. 99, 72 S. Ct. 502, 96 L. Ed. 775; *Zorach v. Clauson*, 343 U. S. 306, 72 S. Ct. 679, 96 L. Ed. 954; *Hammerstein v. Superior Court of California*, 340 U. S. 622, 71 S. Ct. 521, 95 L. Ed. 586). It is submitted that adequate non-federal grounds exist in the instant case to support the judgment of the District Court of Appeal of the State of California and that this Honorable Court should therefore refuse jurisdiction of this appeal.

II.

The Federal Questions Sought to Be Reviewed Were Not Expressly Passed Upon by the State Courts.

Although appellant suggests that he has urged and the California trial and appellate courts have determined federal questions throughout the proceedings (Statement of Jurisdiction, pp. 7-9), actually appellant urged such contentions only at pages 38-40 of his Opening Brief in the District Court of Appeal. Further, such contentions were never expressly passed upon by any California court as federal questions.

Appellant claims; at page 7 of his Statement of Jurisdiction, that the federal question of impairment of the obligation of a contract was raised in paragraphs VIII, IX and XI of his answer to the complaint. A reading of those paragraphs reveals that his only claim therein was that the construction of the subject freeway would violate the terms of the 1898 deed and would violate the provisions of the City Charter. He nowhere alleged any act or statute as being violative of the United States Constitution, nor does he now set forth in what manner the trial court ruled upon such alleged federal constitutional issue.

Appellant next refers to the *content* of his proposed cross-complaint as having raised a federal question. (Statement of Jurisdiction, pp. 7 and 8.) That cross-complaint was *never filed*. (Statement of Jurisdiction, p. 12). Appellant merely sought leave to file same, which leave the trial court denied in the exercise of its undis-

puted discretion. Appellant makes no contention that the action of the trial judge was based upon any ruling under the federal constitution.

Appellant next cites as federal questions his objections presented in the pretrial conference and in the trial court that he had been "denied his day in court" by the denial of his request for leave to file a cross-complaint (Statement of Jurisdiction, p. 8). We have read appellant's "Objection . . . to Pre Trial Conference" and all the pages of the Reporter's Transcript cited by him and are unable to find wherein he claims his rights under the federal constitution have been denied nor have we been able to find where the trial court's rulings on such objections were based upon federal constitutional law. Moreover, discretionary action of a state court denying leave to file a particular document, which action is reviewed and affirmed by a state appellate court, is solely a state affair and does not present a federal question (*Barrington v. Missouri*, 205 U. S. 483, 27 S. Ct. 582, 51 L. Ed. 890).

Appellant's reference to the trial court's Findings of Fact (Statement of Jurisdiction, p. 8) as having ruled upon a federal constitutional point is equally unavailing. A search of the record reveals that the federal constitution was not even referred to therein by the trial court.

Where a party claims that a federal question was properly raised in the state courts, he must show that such question arose from "distinct and positive" averments and not from mere inference. "The statutory requirement is not met unless the party unmistakably declares that he invokes, for the protection of his rights, the Constitution, or some treaty, statute, commission, or author-

ity, of the United States." (*Michigan Sugar Co. v. Michigan*, 185 U. S. 112, 22 S. Ct. 581, 46 L. Ed. 829). To the same effect see also *House v. Road Improvement District No. 2*, 266 U. S. 175, 45 S. Ct. 60, 69 L. Ed. 229; *Valley Steamship Co. v. Wattawa*, 244 U. S. 202, 37 S. Ct. 523, 61 L. Ed. 1084; *Thomas v. Iowa*, 209 U. S. 258, 28 S. Ct. 487, 52 L. Ed. 782. Further, a claim that a federal question has been judicially passed upon must similarly be supported by unequivocally clear language. (*Lynch v. New York ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191).

At page 9 of his Statement of Jurisdiction appellant refers [redacted] the first point at which we can agree that he raises a federal question—his Opening Brief in the California District Court of Appeal wherein, at pages 38 to 40, he urged as violative of *both* the state and federal constitutions, that:

> 1. The taking of Griffith Park lands without compensation to him is in violation of the 14th Amendment to the United States Constitution.
>
> 2. The taking of Griffith Park lands for state freeway purposes violates the due process clause of the 14th Amendment to the United States Constitution.
>
> 3. The enactment of Section 103.5 of the Streets and Highways Code and the adoption by the State Highway Commission of a resolution authorizing the condemnation of Griffith Park lands for a state freeway impairs the obligation of a contract in violation of Article 1, Section 10 of the United States Constitution.

The District Court of Appeal in answering such contentions stated only that the exercise of the power of

eminent domain did not interfere with the inviolability of contracts, cited two federal cases in support thereof, and then concluded (Statement of Jurisdiction, Appendix, p. 17) that the resolutions of the California State Highway Commission authorizing the condemnation of Griffith Park lands could not be "unconstitutional as impairing the obligations of the contract between the donors of Griffith Park and the City of Los Angeles," and that "the constitutional inhibition of any state law impairing the obligation of contracts is not a limit on any statute authorizing the state or any department thereof to exercise the power of eminent domain." In neither instance, however, did the District Court of Appeal mention whether it was making such comment with respect to the federal or the California Constitution or both.

In the case of *Lynch v. New York ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191, relator sought relief in the state courts, urging both state and federal constitutional grounds. The state court denied such relief, citing federal cases under the federal constitution, but did not specify that it was basing its opinion on the federal constitution. The United States Supreme Court in denying certiorari recognized that the state court opinion *may* have been based upon the state constitution and determined that when if was not evident whether a federal question had been passed upon by the state court, it will be presumed that the decision was based upon state law. To the same effect, see also *Southwestern Bell Telephone Co. v. Oklahoma*, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 751, and *International Steel & Iron Co.*

v. National Surety Co., 297 U. S. 657, 56 S. Ct. 619, 80 L. Ed. 961. It is submitted that, applying the principle of the above discussed *Lynch* case to the present case, appellant has failed to show wherein the California District Court of Appeal or any of the other California courts passed upon a question under the federal constitution.

III.

The Instant Appeal Does Not Present a Substantial Federal Question.

It is submitted that it is evident from a reading of the pleadings in the trial court, the briefs in the appellate courts and the decisions of the trial court and of the District Court of Appeal, that the within matter was tried and determined on state issues; that the questions involving the federal constitution were presented by appellant in only one of the three state courts and even then those questions were presented in a most cursory manner and were based upon false and frivolous premises as discussed above. It is submitted that under such circumstances such questions will not be considered as *substantial* federal questions upon which to base an appeal to this Honorable Court. (*Parker v. McLain*, 237 U. S. 469, 35 S. Ct. 632, 59 L. Ed. 1051; *Zucht v. King*, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194; *Valley Steamship Co. v. Wattawa*, 244 U. S. 202, 37 S. Ct. 523, 61 L. Ed. 1084; *United States Fidelity & Guaranty Co. v. State of Oklahoma*, 250 U. S. 111, 39 S. Ct. 399, 63 L. Ed. 876; *House v. Road Improvement District No. 2*, 266 U. S. 175, 45 S. Ct. 60, 69 L. Ed. 229).

Conclusion.

For each and every of the reasons set forth above it is respectfully submitted that the within appeal to this Honorable Court should be dismissed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

BOURKE JONES,
Assistant City Attorney,

CLAUDE E. HILKER,
Deputy City Attorney,

Attorneys for Appellee, City of Los Angeles.